HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION NO. 1554 OF 2006

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Between:

N. Koteshwar Rao and two others.

……Petitioners

And

The Government of A.P.,

Rep. by its Principal Secretary,

Revenue Department, Secretariat,

Hyderabad and two others.

……Respondents

:: JUDGMENT ::

Counsel for the Petitioners : Mr. G. Vidyasagar

Counsel for the Respondents : Government Pleader for

Revenue

Dated: 28-01-2006

Per G.S. SINGHVI, CJ

In this petition, the petitioners have prayed for striking down Section 22-A of the Registration Act, 1908, as inserted by the Andhra Pradesh Act No. 4 of 1999 (for short 'the Act) and Rule 2(b) of the A.P Registration (Prohibition of Registration of Certain Documents opposed to Public Policy) Rules, 1999 (for short 'the Rules'). They have further prayed for quashing endorsement dated 28-12-2005 made by Sub-Registrar, Gopalapatnam (Visakhapatnam).

The petitioners purchased 288.88 square yards of land from Smt. G. Parvati W/o late Sri G. Viswanadha Raju and
Smt. G. Lakshmi Narasayyamma W/o Sri G.V.S. Raju vide registered sale deed dated 20-12-2005. On presentation of the sale deed for registration, Sub-Registrar, Gopalapatnam returned the same with an endorsement that land regularization certificate be obtained in view of notification dated 25-08-2000 issued under Section 22-A of the Act prohibiting the registration of the documents.

The petitioners have challenged the constitutionality of Section 22-A of the Act primarily on the ground that the provision contained therein is wholly arbitrary,

capricious, unreasonable and unjust because it seeks to deprive the purchasers of the properties of their legitimate right to get the document registered. According to the petitioners, the expression 'public policy' appearing in Section 22-A(1) of the Act is too vague and fanciful and confers uncanalised power on the executive authorities to refuse registration of the document. The petitioners have also challenged Rule 2(b) of the Rules and the notifications issued by the State Government on similar grounds.

We have heard the learned counsel for the parties. Sri G. Vidyasagar invited our attention to the judgment of the Supreme Court in **State of Rajasthan and others vs. Basant Nahata** to show that Section 22-A of the Act, as amended by the State of Rajasthan by Act No. 16 of 1976 has been treated as unconstitutional and argued that Section 22-A of the Act, which is in pari materia to Section 22-A enacted by the State of Rajasthan should be declared as unconstitutional. Learned counsel submitted that the impugned provision does not contain any legislative policy and, therefore, the same is liable to be struck down. He further argued that rules framed by the State Government for implementation of the provisions of Section 22-A of the Act and the notifications issued from time to time prohibiting registration of the documents are also liable to be struck down. Learned counsel also relied on order dated
07-12-2005 passed in Writ Petition No. 14099 of 2003 and connected matters, **K. Rama Devi Vs. State of Andhra Pradesh and others** and submitted that relief may be granted to the petitioner.

Learned Special Government Pleader fairly stated that the language of Section 22-A of the Act is identical to the similar provision enacted by the Legislature of the State of Rajasthan and that the said provision has been found by the Supreme Court to be unconstitutional, but argued that the Court may not strike down the provision impugned in the petition because the legislative policy underlying Section 22-A is discernible from the rules framed by the State Government and the notifications issued from time to time.

We have considered the respective submissions and perused the record.

Section 22-A of the Act, as inserted by A.P. Act No.4 of 1999 reads as under:

> "**Documents registration of which is opposed to public policy** – (1) The State Government may, by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy.
>
> 2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable".

Section 22-A (as amended by Rajasthan Act No. 16 of 1976) also reads as under:

> "**Documents registration of which is opposed to public policy** – (1) The State Government may by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy.
>
> 2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

A bare reading of the above reproduced provisions shows that the same are identical. The Rajasthan amendment was struck down by a Division Bench of that High Court. On appeal, the Supreme Court upheld the decision of the High Court and laid down the following propositions:

i. "Public policy is not capable of being given a precise definition. What is 'opposed to public policy' would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the Court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contradistinguished from the policy of a particular Govt. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is

contained in a branch of common law, it is governed by precedents. The principles have been crystallized under different heads and though it may be possible for the Courts to expound and apply them to different situations but it is trite that the said doctrine should not be taken recourse to in 'clear and incontestable cases of harm to the public though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world.'

ii. The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.

iii. S.22-A of the Act through a subordinate legislation cannot control the transactions, which fall out of the scope thereof. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, thus, would not be valid. In absence of any substantive provisions contained in a parliamentary or legislative act, a person cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under S.300-A of the Constitution of India.

iv. A thing which itself is so uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it. Essential functions of the Legislature cannot be delegated and it must be judged with touchstone of Art.14 and Art.246 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise, a policy-decision can be subjected to judicial review.

v. The contention raised on behalf of the appellants herein that the State, being higher authority, having been delegated with the power of making declaration in terms of Section 22-A of the Act, would not be abused is stated to be rejected. Such a question does not arise herein as the provision has been held to be ultra vires Articles 14 and 246 of the Constitution of India.

In **K. Rama Devi's** case (supra), this Court struck down Section 22-A of the Act and Rule 2(b) of the Rules.

In view of the above, the writ petition is allowed. Section 22-A of the Act and Rule 2(b) of the Rules are struck down. Endorsement dated 28-12-2005 made by the Sub-Registrar, Gopalapatnam is quashed.

While disposing of the writ petition in the manner indicated above, we accept the oral request made by the learned Government Pleader and direct that operation of this order shall remain suspended for a period of two months from today so as to enable the State to approach the Supreme Court.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

28-01-2006

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